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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

PETERSON, KENNETH E

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 12/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/808,775

Applicant(s)

PETERS ET AL.

Examiner

Kenneth E Peterson

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 4 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2 is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Art Unit: 3724

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Esterly '519 in view of Rom '925.

Esterly shows a head assembly with most of the recited limitations, including an oblique channel (41), a slide (57) having a depth limiter (42,43) and a blade magazine (32,36,38).

Esterly's blade magazine does not appear to be depth adjustable on the slide. However, Rom shows that it is well known to adjust for depth-of-penetration by using a fastener (64, lines 7,8, column 4). It would have been obvious to one of ordinary skill in the art to have modified Esterly by making the blade magazine slide in a channel with an adjustment mechanism, as suggested by Esterly, in order to better adjust the depth-of-penetration.

3. Claim 2 is allowed.

4. Applicant's arguments have been fully considered but they are not persuasive.

Applicant has overcome the rejection under 35 USC 112, 2<sup>nd</sup> paragraph.

Applicant argues against the rejection under 35 USC 103, stating that Esterly does not show a "magazine" for the blade. When determining the scope of the term "magazine", the examiner has taken a close look at the how Applicant has used the

term. Applicant's "magazine" is a plate 134 with a blade (112) held on one side by a screw (146). In a like fashion, Esterly's "magazine" is a plate (36) with a blade (32) held on one side by a screw (38). Based on Applicant's use of the term "magazine", it is deemed that Esterly also has a "magazine".

Applicant has correctly noted that the rejection should have read "as suggested by Rom", rather than "as suggested by Esterly". Applicant argues that Rom does not teach adjusting the blade depth using fastener 64. Examiner disagrees. Reading lines 7 and 8 of column 4, *"a fastener 64 may be employed for adjustably holding the blade relative to the support"*. One of ordinary skill in the art would read this, view figure 6, and quickly understand that blade depth could be adjusted. Rom describes this adjustment as being in a "conventional fashion". An example of such a conventional fashion can be seen in Davis '612, who shows an adjustable blade fastener (40).

Applicant argues that combining the depth adjustment of Esterly with the depth adjustment of Rom would be redundant and unnecessary. However, Rom himself teaches having three blade depth adjusters (by the drive means on lines 34-36 of column 4, by the rack and pinion on lines 29-33 of column 4, and by the adjustable fastener on lines 7 and 8 of column 4). So it can be seen that it is desirable to have plural depth adjustments, as shown by Rom. It is not clear why Applicant argues that plural depth adjusters are undesirable when Applicant himself has two depth adjusters. Further worth noting are court cases such as St. Regis Paper Co. v. Bemis Co., Inc., 193 USPQ 8, 11 which sets forth that adding redundant features is obvious, as a back up.

To sum, it is clear to the Examiner that Applicant's blade guide system is significantly different than the prior art, but currently claim 1 is too broad, and thus reads on a combination of the prior art. There are numerous elements that could be added to claim 1 to distinguish over the prior art combination.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ken Peterson whose telephone number is 703-308-2186. The examiner can normally be reached on Monday thru Thursday between 7am and 4pm. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 703-308-1082.

In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9302. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-1148.

kp

December 3, 2002

  
KENNETH E. PETERSON  
PRIMARY EXAMINER